IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.450 OF 2004

IN

FIRST APPEAL NO.986 OF 1989

Mrs.Kathleen Mary Pereira & Anr. ...Petitioners

Versus

Fredoline Anthony Joseph & Ors. ...Respondents

.....

Mr.S.G.Deshpande for Petitioners.

Mr.Omen Menezes i/b Mr.R.P.Mudholkar for Respondents 1 to 7.

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CORAM: A.M.KHANWILKAR, J.

MARCH 29, 2006.

P.C.

1. Heard Counsel for the parties at length. Perused the pleadings on record.

2. Essentially, the grievance of the Petitioners is twofold. The first grievance is that inspite of injunction against the Respondents

not to create third party rights in respect of the suit property, they have proceeded to enter into Sale Deed in favour of third party in March 2003 and April 2003. The second grievance is that the Respondents have committed breach of the order passed by this Court. Firstly, of the order dated 15th October 2003 passed by Justice D.G.Deshpande and another order dated 9th July 2003 passed by Justice V.C.Daga requiring the Respondents to maintain status-quo and not to carry on with the construction activity on the suit property.

3. I shall deal with the first grievance referred to above. In my view, there is no substance in this grievance. The argument clearly overlooks the fact that the order of injunction not to create third party rights came to be passed in the First Appeal on 4th December 1989, which, however, continued only till 23rd September 1998. This is so because the Appeal was held to have abated on 23rd September 1998 by a speaking order passed by this Court. As a consequence, all interim reliefs granted in the said Appeal stood vacated on that date. The Appeal was restored only

on 22nd April 2003. In law, therefore, there was no interim order against the Respondents between 24th September 1998 till 21st April 2003. According to the Respondents, the transactions which have taken place were effected between March and April 2003, when there was no interim order operating against the Respondents. This stand taken on behalf of the Respondents will have to be accepted.

4. To get over this position, Counsel for the Petitioners would contend that on restoration of the Appeal on 22nd April 2003, the injunction which was originally granted on 4th December 1989 would stand automatically revived. In support of this submission, reliance is placed on the decision of the Supreme Court in the case of **Vareed Jacob vs. Sosamma Geevarghese & Ors. reported in 2005(1) B.C.R. 413**. Indeed, the Petitioners would be justified in taking that position. However, what is relevant for our purpose is the exposition in Paragraph 18 of the Judgment which is founded on the decision of the Madras High Court in Saranatha Ayyangar vs. Muthiah Moopanar reported in 1934

Mad.49, which has taken a view that as a matter of general rule on restoration of the suit dismissed for default, all interlocutory orders shall stand revived unless during the interregnum between dismissal of the suit and restoration, there is any alienation in favour of a third party. This is precisely what has happened in the present case.

5. The argument that the transaction effected in March and April 2003 are afterthought, is a disputed question, which will have to be resolved in the pending First Appeal. For the time being, the stand taken by the parties on affidavit before this Court which is supported by the documents on record, if accepted as it is, it will necessarily follow that there was no breach of any injunction order passed by this Court.

6. As mentioned earlier, the question whether the said Agreements are genuine or afterthought, will have to be resolved in the pending First Appeal and that finding ought to be avoided in the present Petition which is contempt action against the Respondents.

7. That takes me to the second grievance of the Petitioners. According to the Petitioners, inspite of the status-quo order passed by this Court on 15th October 2003 below Civil Application No.1388 of 2003 and the earlier order passed by Justice V.C.Daga on 9th July 2003, the Respondents continued with the construction activity. According to the Petitioners, from the pleadings on record, it is obvious that till May 2003, the Respondents had constructed three slabs and internal walls and ground + 1st floor and invested amount of about Rs.20,00,000/- (Rupees Twenty Lakhs) in the said construction. In the subsequent affidavit filed on 28th July 2003, however, it is mentioned by the Respondents that the construction work was at the point of total completion as on 28th July 2003. According to the Petitioners, it is inconceivable that in the span of few days from May 2003 till 28th July 2003, the situation would undergo change inspite of the injunction granted on 9th July 2003. This argument has been countered by the Respondents. According to the Respondents, there was no formal order passed by Justice

V.C.Daga on 9th July 2003. It was only oral direction given. Nevertheless, the Respondents have chosen to abide by that direction as is evident from the correspondence exchanged between the parties on record. There is, however, substance in the argument canvassed on behalf of the Respondents that the oral direction so given by Justice V.C.Daga was to operate only for one week when the Application was to be taken up for further hearing. On expiry of one week, no further order has been passed requiring the Respondents to refrain from carrying on any construction activity. According to the Petitioners, however, the Respondents had taken out application being Civil Application No.1778 of 2003 for vacating the order of injunction already passed on 4th December 1989, which presupposes that the Respondents concede the operation of the order passed by this Court on 9th July 2003. It is not possible to accept this submission. The Civil Application No.1778 of of 2003 was filed by the Respondents as counter blast to the Civil Application taken out by the Petitioners being Civil Application No.1388 of 2003. The subject matter of this Civil Application

was issue of revival or non-revival of order dated 4th December 1989. No more and no less. Even if the order of 4th December 1989 were to be revived, that only injuncted the Respondents from creating third party rights in respect of the disputed property and does not in any manner deals with the issue of further construction activity on the suit property.

8. Be that as it may, what is relevant to note is that subsequently, all the Civil Applications filed by the Petitioners as well as Respondents came to be disposed of on 15th July 2004 as not pressed. In that sense, the reliefs or the observations made in those proceedings at the relevant time were effaced from the record on 15th July 2004. In my opinion, neither the order dated 9th July 2003 nor the order dated 15th October 2003 has been breached by the Respondents. In any case, there is no clear evidence to accept the grievance of the Petitioners that the construction activity was continued unabated inspite of the injunction order on 9th July 2003. Counsel for the Petitioners would, however, place reliance on the

decision of our High Court in the case of **Govinda Bhagoji Kamable & Ors. vs. Sadu Bapu Kamable & Ors. reported in 2005(1) Mh.L.J. 651** to contend that the ad-interim relief which was granted on 9th July 2003 although recorded that it will operate in the meantime, would mean that the same will operate till the disposal of the Civil Application. Indeed, in the ordinary situation, the interpretation put forth in this decision will come handy. However, in the present case, the said order dated July 9, 2003 is not reckoned but only oral observation. Besides, the action is one of contempt proceedings. The order, if passed, provides two different interpretations, the Court would not precipitate the contempt action.

9. Viewed in this perspective, in my opinion, this is not a matter which should be proceeded further. Hence, while dismissing this Petition, it is observed that all issues pending between the parties in the main proceedings being First Appeal No.986 of 1989 will have to be decided on its own merits in accordance with law, uninfluenced by any observations made in this order.

10. Ordered accordingly.

A.M.KHANWILKAR, J.